IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2427 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JATIN RAVJIBHAI THAKOR (PATANVADIA)

Versus

COMMISSIONER OF POLICE

Appearance:

MR ADIL MEHTA for Petitioner

MR KT DAVE, AGP, for respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/05/2000

ORAL JUDGEMENT

1. Commissioner of Police, Baroda City, Baroda, passed an order on July 15, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Jatin Ravjibhai Thakor (Patanvadia) under the provisions of the said Act.

2. The detaining authority took into consideration seven offences registered against the petitioner, so also the statements of three anonymous witnesses. The detaining authority considered the activities of the detenu as that of a dangerous person as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Mehta, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He submitted that the detaining authority has exercised the powers under Section 9(2) of the PASA Act without undertaking any exercise expected of it. The authority has mechanically exercised these powers and has maintained anonymity in respect of identity of the witnesses. This has resulted into infringement of right of the detenu of making an effective representation guaranteed under Article 22(5) of the Constitution.

3.1 Mr. Mehta submitted further that the representation made on behalf of the detenu has been considered late. The documents demanded by the representation have not been supplied and, therefore, the right of the detenu of making an effective representation is adversely affected. He, therefore, submitted that the petition may be allowed and the order of detention may be quashed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that there is no delay in considering the representation. The representation dated the 14th March, 2000 was received by the authority on the 15th March, 2000 and was decided on the 22nd March, 2000. In between, 17th, 18th and 20th March were holidays and, therefore, the procedure in deciding the representation was over within three working days. Mr. Dave, therefore, urged that the petition may be dismissed.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on June 13, 15 and 18, 1999. The same have been verified by the detaining authority on July 10 and 12,

1999 and the order is passed on July 15, 1999. If the verification is seen, it is nothing but reiteration of the contents of the main statements recorded by the sponsoring authority. The detaining authority has recorded subjective satisfaction about the correctness and genuineness of the fear expressed by the witnesses quo the detenu and the need for exercise of powers under Section 9(2) of the PASA Act in public interest. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186).

6. So far as the registered offences are concerned, it may be noted that the detenu, in the representation, made demand of certain relevant documents. The said representation was rejected by the State Government and the documents have not been supplied. Mr. Dave, after consulting the file, states that while rejecting the representation, the State Government does not seem to have issued any direction to the detaining authority for supply of the documents. Under the circumstances, rejection of representation for non-supply of documents can be said to have infringed the right of the detenu of making an effective representation guaranteed under the Constitution.

7. The upshot of the above discussion is that the statements cannot be believed on account of improper exercise of powers under Section 9(2) of the PASA Act. The registered offences cannot be considered due to non-supply of relevant documents, though demanded, and in respect of both, the right of the detenu is adversely affected. The detention order, therefore, cannot be sustained. The petition deserves to be allowed.

7. In the result, the petition is allowed. The

impugned order of detention dated July 15, 1999, passed against the detenu is hereby quashed. The detenu-Jatin Ravjibhai Thakor (Patanvadia) is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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